



TOWN OF NEW WINDSOR

ZONING BOARD OF APPEALS

Regular Session

Date: FEBRUARY 10, 2003

AGENDA

7:30 p.m. – Roll Call

Motion to accept minutes of JANUARY 27, 2003 meeting as written.

PRELIMINARY MEETINGS:

1. **PAUL DECKER (#03-06)** Request for variance of Section 48-14(A)(4) of the Zoning Code - Existing shed projects closer to road than house (Corner Lot) on Butternut Drive in a CL Zone (80-3-1)
2. **ROBERT DEPAOLIS (#03-05)** Request for 11 ft. side yard and 37 ft. rear yard setbacks to construct a pool and a deck on Constitution Way in an R-3 Zone (77-8-8).
3. **FRANCIS WHITAKER (FOR ROSE CRUDELE) (#03-07)** Request for variance of Section 48-26B of the Zoning Code –nonconforming residential lot which does not meet bulk regulations, attached to land in the same ownership, on Myrtle Avenue in an R-4 Zone (15-2-10)
4. **SUSAN & MARTIN OLSEN (03-08)** Request for 16 ft. side yard setback for existing deck on Sycamore Drive in an R-4 Zone (63-4-16)

PUBLIC HEARINGS:

5. **DAVID CRAWFORD (#02-74)** Request for 6' rear yard setback for existing deck at 70 Merline Ave. in an R-4 Zone (15-4-4)
6. **RONALD & LARISUE MC DERMOTT (BIAGINI) (#02-70)** Request for; 8,000 sf lot area, 30' lot width, 5' front yard setback, 10' rear yard setback to construct single family home on Merline Avenue in an R-4 Zone (15-4-30)
7. **HUDSON VALLEY DRILLING (#02-34)** Request for 2.4 ft. for required side yard setback on Route 94 in an NC Zone (67-4-16)

Myra (845) 563-4615

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

FEBRUARY 10, 2003

MEMBERS PRESENT: LAWRENCE TORLEY, CHAIRMAN
MICHAEL KANE
LEN MCDONALD
MICHAEL REIS
STEPHEN RIVERA

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

REGULAR MEETING

MR. TORLEY: I'd like to calling to order the February 10, 2003 zoning board meeting.

APPROVAL OF MINUTES DATED JANUARY 27, 2003

MR. TORLEY: Motion to accept the minutes of January 27, 2003.

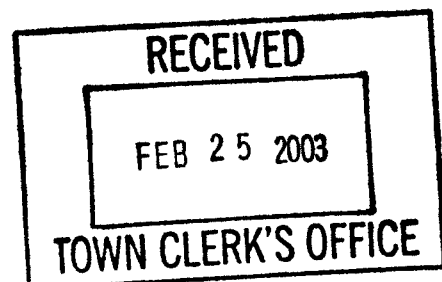
MR. KANE: I move we accept the minutes of January 27 as written.

MR. REIS: Second it.

ROLL CALL

MR. KANE
MR. REIS

AYE
AYE



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MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

PRELIMINARY MEETINGS:

PAUL DECKER - #03-06

MR. TORLEY: Request for variance of Section 48-14(A)(4) of the Zoning Code - existing shed projects closer to road than house (corner lot) on Butternut Drive in a CL zone.

Mr. Paul Decker appeared before the board for this proposal.

MR. MC DONALD: I will recuse myself on this because this is family.

MR. TORLEY: Corner lot, right?

MR. DECKER: Yes.

MR. TORLEY: So what's the problem, Mr. Decker?

MR. DECKER: The rear portion of my lot is a pie shaped lot that tapers to a smaller cross-sectional area. As you move towards the rear property line, the house measured 52 feet six inches from the road, the shed where I installed we measured it's actually 32 feet from the road, hence it's closer to the road than the house. The information I submitted to the board you'll see I drew a parallel line where it would show where you could actually put it, I have some other ones here that show a marked up survey but due to the incline in the back yard and the current deck that's there, I was very limited where I could put the shed.

MR. KANE: Considering that if you didn't have a corner piece of property you wouldn't be here.

MR. DECKER: Correct.

MR. TORLEY: It's definitely an odd shaped lot.

MR. KANE: The shed itself is similar to other sheds in the neighborhood?

MR. DECKER: Yes.

MR. KANE: Any complaints formally or informally about the shed?

MR. DECKER: No.

MR. TORLEY: And you're seeking what's called an area variance. Now, that requires a balancing of, by this board of the benefit to you if we grant you the variance versus any impact on your neighbors or the town. So one of the thing we want to know, you said why you have to put it where it is, in other words, you couldn't practically put it someplace where it fit the code, that kind of thing. That's the kind of thing. Gentlemen, do you have any other questions you'd like to bring up?

MR. REIS: Accept a motion?

MR. KRIEGER: They want to know, in the public hearing want to know about the ponding or collection of water?

MR. KANE: Right, are you going to create any runoffs or water hazards?

MR. DECKER: No.

MR. KANE: Knocked down any trees?

MR. DECKER: No.

MR. KRIEGER: How long has it been up?

MR. DECKER: Approximately 19 months. At this point, it's installed on a gravel base that's surrounding it for plenty of drainage.

MR. KANE: Again, for safety reasons, it's practically the only spot left in your yard?

MR. DECKER: It goes down and kind of levels out.

MR. TORLEY: Topo of the lot?

MR. DECKER: Yes.

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MR. TORLEY: Gentlemen?

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: Make a motion we set up Mr. Decker for his requested variance at Butternut Drive.

MR. KANE: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. RIVERA	AYE
MR. MC DONALD	ABSTAIN
MR. TORLEY	AYE

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ROBERT DEPAOLIS #03-05

MR. TORLEY: Is there anyone here for this? We'll save this one until the end in case he shows up.

FRANCIS WHITAKER (FOR ROSE CRUDELE) #03-07

Mr. Francis Whitaker appeared before the board for this proposal.

MR. TORLEY: Request for variance of Section 48-26B of the Zoning Code - nonconforming residential lot which does not meet bulk regulations, attached to land in the same ownership on Myrtle Avenue in an R-4 zone.

MR. WHITAKER: Good evening. I represent the Crudele family on this matter. They own three lots down in Myrtle Avenue just south of Bradford and one of them is with a fairly new house on it, the second one is a big vacant lot and the third one is the house, an old two story house. And what they're doing it's actually their parents' house and they're trying to sell the house and the vacant lot, the vacant lot particularly as a building lot, however, they ran into problems because the zoning is 12,600 square feet when they need 15,000 so they're asking for a variance on this.

MR. TORLEY: Part of the problem that our code reflects you have a string of non-conforming lots but they're all in one ownership, the code says that one lot, you can't make non-conforming lots cause you owned them all to begin with so you're asking for an appeal of that part as well.

MR. WHITAKER: Well, these are all separate lots, in other words, they kept them separate lots through the years.

MR. TORLEY: They were kept as separate tax lots?

MR. WHITAKER: Yes.

MR. TORLEY: But all in the same ownership.

MR. WHITAKER: Well, they're all the in the same ownership now because there's only the daughters and one son left and over the years, they have been deeded to the daughters and the one son.

MR. TORLEY: So what I'm looking at according to the

tax map there were four lots and what you're saying you've got a house here?

MR. WHITAKER: No, house here and a house here.

MR. TORLEY: And this whole lot?

MR. WHITAKER: This is just one big vacant lot.

MR. KRIEGER: How long have they been in common ownership?

MR. WHITAKER: In common ownership, gee, I think '33 or somewhere before that.

MR. KRIEGER: Well, you said this is the daughter, she didn't always own it, it was transferred.

MR. WHITAKER: Well, what happened was the father owned, bought these lots through the years, he took the 5 on one side and put a big house on it, he bought the, he also had the 4 next to it, which is the one we're talking about, tax parcel 10, then he took, he bought the 2, actually the four lots next to it, two in the front, two in the back with an old house on it and that's one that Rose is keeping, that's here house now but the family's trying to sell the others.

MR. REIS: Mr. Chairman, correct me if I'm wrong, Michael, maybe you can add to this, the variance that he is seeking has to do with the four lots which was a satisfactory lot prior to current zoning, correct?

MR. KRIEGER: What you're saying these four lots outlined are all in separate ownership or separate tax deed?

MR. WHITAKER: Yes, they're in the process right now of getting rid of 11.1, they sold that and that's just been finalized.

MR. KRIEGER: 11.1 is being sold as one giant lot?

MR. WHITAKER: Yes, that's with the big house on it.

MR. BABCOCK: Lot 10 is one lot as we speak?

MR. WHITAKER: Yes.

MR. BABCOCK: Lot 11.1 is also one lot in the same ownership, those two lots do not meet the non-conforming standards or they do meet the non-conforming standards, excuse me, the problem with it is that they're in the same ownership so they're a non-conforming lot which Section 48-26 says, describes a non-conforming lot and goes on to say if you have two or more non-conforming lots in the same ownership, adjacent lots, you have three years from the time of the zone change to apply for a building permit. That time has expired.

MR. TORLEY: By 20 years.

MR. BABCOCK: Well, I think this, 1986 is my guess when this, we know it's more than three years, so we didn't bother searching out the time.

MR. KANE: But we're talking a massive amount of time.

MR. TORLEY: Yeah, 15 years.

MR. KRIEGER: So who owns 11.1?

MR. BABCOCK: Same person.

MR. KRIEGER: Only in her name or joint name?

MR. WHITAKER: No, there's three daughters and one son, they own 11.1.

MR. KRIEGER: All collectively own 11.1?

MR. WHITAKER: All collectively own 10.

MR. KRIEGER: And the same four owners own 10?

MR. WHITAKER: Yes.

MR. KRIEGER: Did they acquire them both at the same time, one after the other?

MR. WHITAKER: I think, you see, I can't remember, I have the list of when the father died, 11.1 went to the mother and the mother just died a few years back but the other, but 10 I think went to the sons and daughters after the father died.

MR. KRIEGER: From the father to the four?

MR. WHITAKER: Yes.

MR. KANE: At a public hearing we'd need some exact dates.

MR. TORLEY: Because if the mother owned 11.1 and the children owned 10 and the mother just died, they weren't in joint, separate ownership, unless the mother died four or five years ago.

MR. KANE: That's not 18 years in between.

MR. WHITAKER: Father just died, the mother just died a couple years back.

MR. KRIEGER: Well, having copies of the deeds to the parcels will tell you when it was transferred.

MR. TORLEY: If it was less than three years ago.

MR. KANE: Doesn't need to be.

MR. TORLEY: Is that the case?

MR. BABCOCK: What we would, look, we don't have any objection either way, but we'd like to have something from the board so it's on record of how you determined what this is.

MR. TORLEY: Then we need a public hearing.

MR. BABCOCK: So when they go to sell the lot, it's done, that's it.

MR. TORLEY: In that case, it would be an interpretation and/or use variance or area variance.

MR. WHITAKER: Let me pose a question to you this way, 11.1 is, I said is up on the block, in fact, it's very close to closing, if I come back the next time and that's not under the name, Crudele, does that make a change in this?

MR. TORLEY: No, I don't know, that's, I would have to think long and hard about that.

MR. REIS: What's the minimum zoning?

MR. BABCOCK: For a non-conforming lot, it's 5,000 square feet in the R-4 zone today is 15,000.

MR. WHITAKER: What the brothers and sisters did they told her to take this one, that's her home now.

MR. TORLEY: So now what you're saying is to summarize the mother owned this lot, the children owned this lot and the father owned--

MR. WHITAKER: No, the father owned all three lots.

MR. TORLEY: One, two and all this.

MR. WHITAKER: No, no, only 7, 7, 10 and 11.1, he died first and he had a tendency to--

MR. TORLEY: And the mother took title to 11.1 Who owns 7 and the children had 10?

MR. WHITAKER: One of the sisters, Rose, she's the one who's the caregiver.

MR. TORLEY: So lot 7 has a house on it?

MR. WHITAKER: Yes.

MR. TORLEY: Lot 11.1 has a house?

MR. WHITAKER: Yes.

MR. TORLEY: Lot 10 doesn't?

MR. WHITAKER: Right.

MR. TORLEY: Rose is part owner of this lot as well?

MR. WHITAKER: Yes.

MR. KRIEGER: I'm not sure it makes it common ownership.

MR. TORLEY: We'll have to think about it.

MR. KANE: We need to see the deeds and titles.

MR. TORLEY: Do you have any other questions you'd like to ask?

MR. KANE: No, sir. Mr. Chairman, I move we set up Francis Whitaker for Rose Crudele for a public hearing on their requested variances and/or an interpretation.

MR. MC DONALD: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

SUSAN AND MARTIN OLSEN #03-08

Mr. and Mrs. Martin Olsen appeared before the board for this proposal.

MR. TORLEY: Request for 16 ft. side yard setback for existing deck on Sycamore Drive in an R-4 zone.

MR. KANE: How long has the deck been up?

MR. OLSEN: Eighteen years that I know of.

MR. KANE: Any complaints formally or informally on the deck?

MR. OLSEN: No.

MR. KANE: Creation of water hazards or runoffs from the deck?

MR. OLSEN: No.

MR. KANE: Tell me a little bit about the deck, how high off the ground?

MR. OLSEN: Probably about hip high, something like that, it's 8 x 12 and it's used as an entrance.

MR. KANE: There's a door coming off the back of the house?

MR. OLSEN: Off the side.

MR. KANE: So without the deck, it would be a safety hazard?

MR. OLSEN: Either that or a jump off spot.

MR. MC DONALD: Somebody could fall?

MR. OLSEN: Oh, yes.

MR. REIS: What brings you to the board?

MR. OLSEN: Trying to sell the house and the bank

wanted to have this cleared up before they proceeded on giving the purchaser a mortgage.

MR. MC DONALD: Other decks in the area similar to yours?

MR. OLSEN: Most are larger than mine.

MR. TORLEY: We'll be asking the same kind of questions at the public hearing, this is just a rehearsal.

MR. OLSEN: Okay.'

MR. KANE: Some towns you come in and what you're doing right now would be it and you live and die on that decision. So if you're not prepared, you're out of luck, also out whatever money you put down. So this way, it's better, you have an idea of what we're looking for. Cut down any trees?

MR. OLSEN: I didn't put the deck up.

MR. KANE: Deck was existing?

MR. OLSEN: Yes, when I purchased the house, it was there.

MR. KANE: You'll have to meet all the building inspector's standards for the deck.

MR. OLSEN: Yes, I'm aware of that. We had an engineer out there to check that already.

MR. MC DONALD: Accept a motion?

MR. TORLEY: Yes, sir.

MR. MC DONALD: Make a motion we set Susan and Martin Olsen up for a 16 foot side yard variance.

MR. RIVERA: Second it.

ROLL CALL

MR. KANE

AYE

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MR. REIS	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

ROBERT DEPAOLIS #03-05

MR. TORLEY: Request for 11 ft. side yard and 37 ft. rear yard setbacks to construct a pool and a deck on Constitution Way in an R-3 zone.

Mr. Robert Depaolis appeared before the board for this proposal.

MR. KANE: Above-ground pool?

MR. DEPAOLIS: Yes.

MR. TORLEY: When you purchased the property, did the sellers inform you of the requirements for the codes?

MR. DEPAOLIS: No.

MR. TORLEY: My recollection is we had the builders in for one, or some of the builders for Mt. Airy Estates and subsequent renamings and cautioned them about the zoning code and constructing the houses so that they would fit, so the house and deck, a deck, a regular deck on the house would fit within the zoning code. This house is set so that a regular deck on the house would fit the code?

MR. BABCOCK: Well, the house is 37 foot off the property line and the requirements are 30, so he could get a 7 foot deck on the back of his house.

MR. KANE: How long have you owned the home, sir?

MR. DEPAOLIS: Three months.

MR. DEPAOLIS: I'm putting up a full 6 foot fence around the property.

MR. TORLEY: All the way around it?

MR. DEPAOLIS: Well, from the front of the building line to the back of the property line.

MR. KANE: Do you have any septic or leach fields in the back there?

MR. DEPAOLIS: No.

MR. KANE: Any reason you couldn't move the 24 foot pool a little bit towards my right looking out?

MR. DEPAOLIS: To the center of the property?

MR. KANE: No, towards the center of your house.

MR. DEPAOLIS: I could, I just wanted to leave myself some yard, that's the only reason I want to put it over there.

MR. REIS: Is your yard basically flat?

MR. DEPAOLIS: It's completely flat, yes.

MR. REIS: We'd like to try to cooperate and help you accomplish your goal here at the same time try to minimize the variance that you're seeking.

MR. DEPAOLIS: Okay.

MR. REIS: There are other pools in your neighborhood similar in size or shape?

MR. DEPAOLIS: Yes, from what I know, there's only like two or three houses that have bigger lots, most of the lots are exactly the same as mine.

MR. TORLEY: You're going to put it 3 feet from the back line?

MR. DEPAOLIS: It's only 37 feet, the pool is 24 feet.

MR. TORLEY: Also going to get into developmental coverage, just by the sketch here looks like it's getting close. There's another part of the code that says you have a lot that's one acre, to pick a number, you can't pave over the whole one acre in a residential zone, it has to be only a certain fraction of it can be developed, the rest has to be grass or trees.

MR. DEPAOLIS: When I bought it, it was sold as a

quarter acre, you know, when you see trees and grass, you see, you don't realize how small your lot's going to be, it's not really a quarter acre, they give you a hundred by a hundred, that's not even close to a quarter.

MR. MC DONALD: They're real close in the back there.

MR. DEPAOLIS: Like I've got 37 feet and another 37 feet is another house.

MR. TORLEY: You want to put the pool so it's 3 feet from your neighbor's back yard?

MR. DEPAOLIS: Right but and it would be ten feet from my house.

MR. KANE: Doesn't have much choice but over here, you could, is it possible just to take that portion of the deck out and leave it as 6 feet from there?

MR. DEPAOLIS: Sure.

MR. KANE: That's not something you want to do, that gets expensive, I only say that because I do it for a living so it's really not necessary, so you can cut that back to a total of 6 feet off the property line.

MR. DEPAOLIS: I'm just doing it.

MR. KANE: And it's a straight line.

MR. DEPAOLIS: The fence is going to come to here anyway so that's no problem.

MR. KANE: Instead of four foot right there from the deck, it would go from the pool wall and make it six feet.

MR. MC DONALD: Change it to six on that side.

MR. BABCOCK: Then he'd just need a side yard of--

MR. KANE: You'd just need the six on the side, cut off the little lip on the deck.

MR. TORLEY: Sir, whom did you buy the property from?

MR. DEPAOLIS: Millennium Homes.

MR. TORLEY: Do you have any other questions at this time?

MR. BABCOCK: The requirements are 12 foot, not 15 foot in this zone, this is an old subdivision.

MR. KANE: So he needs a 6 foot side yard variance.

MR. TORLEY: This is not a corner lot, is it?

MR. DEPAOLIS: No.

MR. KANE: Instead of 11 foot on your paperwork it will be 6 foot.

MR. REIS: You're with us on that?

MR. DEPAOLIS: That it would be 6 foot variance.

MR. REIS: Change your sketch, right.

MR. DEPAOLIS: Yes.

MR. KANE: Who's putting up your pool?

MR. DEPAOLIS: I'm going to put it up myself.

MR. KANE: Make sure of the measurements because when the bank checks if you're a couple inches off, you'll fail, so make sure you get the 6 foot.

MR. DEPAOLIS: What I intend to do is put the fence up first.

MR. TORLEY: The fence can't be, a 6 foot fence can't be closer to the road than your house.

MR. DEPAOLIS: It's not going to be any closer to the road.

MR. TORLEY: The code says you can only have four foot fence in your front yard.

MR. DEPAOLIS: No, I'm only going to the building, actually, the building line on one side and the other side I can only go halfway up.

MR. BABCOCK: He's already received the permit for the fence so he's in compliance.

MR. KANE: Not going to be creating any water hazards in the building of the deck and pool?

MR. DEPAOLIS: No.

MR. KANE: Not cutting down any trees?

MR. DEPAOLIS: No, they didn't leave a tree there.

MR. KANE: And the pool and deck will be similar to in size and look to other pools and decks in the neighborhood? You're not changing the look of the neighborhood?

MR. DEPAOLIS: No.

MR. TORLEY: And when you purchased the house, again, the house was constructed when you bought it?

MR. DEPAOLIS: No, just a lot.

MR. TORLEY: May I ask who the builder was?

MR. DEPAOLIS: Millennium Homes, they hired an outside contractor, I'm not sure who it was.

MR. TORLEY: Part of the reason I'm saying this is Millennium Homes we warned them about siting the houses on the lots so that regular decks could be attached.

MR. KANE: We also talked to them, that was that one specific development.

MR. TORLEY: That's this one, Mt. Airy Estates. Okay, gentlemen, do you have anything else?

MR. KANE: That's something you take up with them.

MR. TORLEY: Gentlemen, anything else?

MR. MC DONALD: No.

MR. REIS: Accept a motion?

MR. TORLEY: Yes, sir.

MR. REIS: I make a motion that we set up Mr. Robert Depaolis for his requested variances at Constitution Way and we're changing the side yard to be 6 foot minimum side yard.

MR. KANE: Second the motion.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

MR. TORLEY: And it's rear yard.

MR. KANE: Six foot side yard, 37 foot rear yard.

PUBLIC HEARINGS:

DAVID CRAWFORD #02-74

Mr. David Crawford appeared before the board for this proposal.

MR. TORLEY: Request for 6' rear yard setback for existing deck at 70 Merline Avenue in an R-4 zone. Is there anyone in the audience who wishes to speak on this matter? Again, anyone who wishes to speak on this application? Let the record show there's none. So, Mr. Crawford?

MR. KANE: Same thing you did in the preliminary hearing.

MR. CRAWFORD: Same deal. What do you need to know?

MR. TORLEY: Just--

MR. KANE: You have an existing deck?

MR. CRAWFORD: Right.

MR. KANE: Your request for a 6 foot rear yard setback, how long has the deck been up?

MR. CRAWFORD: About six months.

MR. KANE: Create any water hazards or runoff with the building of the deck?

MR. CRAWFORD: Not at all.

MR. KANE: Cut down any trees or vegetation?

MR. CRAWFORD: No.

MR. KANE: Any complaints formally or informally on the deck?

MR. CRAWFORD: Not one.

MR. KANE: Did you get a building permit on the deck?

MR. CRAWFORD: Absolutely.

MR. TORLEY: Other neighbors have decks like this?

MR. CRAWFORD: Oh, yeah. Well, not quite like this.

MR. TORLEY: Similar?

MR. CRAWFORD: Decks, sure.

MR. KANE: How high is it off the ground?

MR. CRAWFORD: About 8 feet.

MR. KANE: Is there a door?

MR. CRAWFORD: French doors that open to the deck.

MR. KANE: Without a deck, you'd consider it a safety hazard?

MR. CRAWFORD: Absolutely.

MR. REIS: Just for the record, can you tell us how many--

MS. MASON: Yes, on January 23, 77 addressed envelopes containing the public hearing notice were mailed.

MR. REIS: Any responses?

MS. MASON: None.

MR. TORLEY: As I said, unless someone's changed their mind, I will open it again to the public, anyone wish to speak? I'll close the public hearing, back to the members of the board. Gentlemen, any other questions you have at this time?

MR. KANE: The deck itself is similar to other decks? Somebody covered that?

MR. MC DONALD: Yeah. Accept a motion?

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MR. TORLEY: Yes.

MR. MC DONALD: Make a motion we grant the request of Mr. David Crawford for a 6 foot rear yard setback for his existing deck at 70 Merline Avenue.

MR. RIVERA: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

RONALD & LARISUE MCDERMOTT (BIAGINI) #02-70

Mr. Robert Biagini appeared before the board for this proposal.

MR. TORLEY: Request for 8,000 s.f. lot area, 30' lot width, 5' front yard setback, 10' rear yard setback to construct single family home on Merline Avenue in an R-4 zone. Anyone wishing to speak on this matter? The requirements are that the minimum lot area be 15,000 square feet, this lot has 7,000 square feet, therefore, he's asking for and will 8,000 square foot variance. The minimum lot width should be 100 feet, he has 70 feet, therefore, he's asking for 30 foot variance, required front yard is 35 feet, he has 30 feet available, therefore, requesting five foot variance. Rear yard is 40 feet, he wants to go 30 feet, so he requires a ten foot rear yard variance. Okay, sir?

MR. BIAGINI: I'd just like to note that other houses in the area have the same back yards as what I plan to construct 1,500 square foot two story house.

MR. MC DONALD: 1,500?

MR. BIAGINI: Yes.

MR. TORLEY: Mike, this does not fall under the non-conforming lots of record requirements?

MR. BABCOCK: Mr. Chairman, the reason we feel it doesn't, it's a non-conforming lot, but we feel it doesn't because it doesn't meet all the criteria of a non-conforming lot, non-conforming lot, you must have a 35 foot front yard and 40 foot rear yard. Since he lacks those two criterias, we feel he doesn't fit into the non-conforming lot, therefore, he's got to use the regular bulk tables although it is actually a non-conforming lot, he'd need a variance from a non-conforming lot which I don't think you can do.

MR. TORLEY: As I recall, the part of the phraseology of the code lots that do not meet those requirements are considered by the town to be incompatible with the orderly growth and proper development of the town, I'm

paraphrasing, not making an exact quote. Does lot 29 and lot 31 have houses along them, that's the neighbors?

MR. BIAGINI: Yes.

MR. KANE: This proposed house is similar in size to those houses?

MR. BIAGINI: Yes.

MR. REIS: Per your diagram to make the house any smaller in width than 28 foot to accommodate the minimum side and front yard or rear and front yards again for the record it wouldn't be much of a house?

MR. BIAGINI: Not at all.

MR. REIS: Just for the record.

MR. TORLEY: Is this five foot front yard setback, would the house then project closer to the road than the neighboring houses?

MR. BIAGINI: Not really, I mean, it doesn't appear to be, I haven't measured the neighbors' front yard but I don't think so.

MR. TORLEY: Gentlemen, with your permission, I'd like to open it up to the public?

MR. KANE: Sure.

MR. TORLEY: Okay, I'm opening up to the public, when you ask your questions or give your statements, please identify yourself again for the record. Anybody wish to start questions or statements?

MR. ARTHUR MOTT: I'm Arthur Mott, I live at 91 Myrtle Avenue, the adjoining property. And I don't understand, I couldn't hear you guys most of the time and my first question is that the, if the property is too small, then why isn't the question moot that somebody build on it?

MR. REIS: It's an existing lot and the owner or the builder is trying to get relief so they can utilize the lot for its highest and best use.

MR. MOTT: What does it take on the adjoining neighbors' part to deny that?

MR. TORLEY: Well, your input is important to us, it's not, you know, it's not a majority rule vote from the public but--

MR. MOTT: But you have to have a reason why.

MR. TORLEY: This is an area variance request, area variance request requires that the board balance the benefit to the applicant, he wants to build a house, his benefit versus the adverse impact if any on the neighborhood, community and the town. So we have to balance those competing interests and so your input is important to us, but it's not going to be like a check mark majority vote or something like that, but we want to know what you're thinking about this.

MR. MOTT: My property directly attaches to their property.

MR. TORLEY: Can you tell me is it what's shown here as lot 31 or lot 29?

MR. MOTT: If this is the lot, I'm the next one.

MR. TORLEY: You're 29?

MR. MOTT: Yes.

MR. REIS: Sir, besides the fact that you don't like the idea, is there any particular thing you don't like about the idea of a house being next door there?

MR. MOTT: I faintly thought I heard the gentleman say that he wanted to build a two story which I don't think is very compatible with the neighborhood, if that's true, I don't hear too good, and how many feet from the property line is he allowed to come?

MR. TORLEY: Side yard?

MR. MOTT: Yeah.

MR. BABCOCK: Side yard he's staying 15 feet away.

MR. TORLEY: Which meets the code.

MR. MOTT: On both sides of the lot?

MR. BABCOCK: Yes.

MR. MOTT: And is there going to be a driveway on the side? Is that counted as part of the building part or?

MR. TORLEY: No.

MR. BIAGINI: Front entry.

MR. TORLEY: It will come in from the front of the house.

MR. MOTT: Grarage will be under the house?

MR. BIAGINI: Right.

MR. TORLEY: So, sir, you're opposed to the granting of this request?

MR. MOTT: Yes, I am.

MR. TORLEY: Thank you.

MR. KANE: Did you have another question, sir?

MR. MOTT: If this materializes against my good wishes, how far in toward my property line can I put a fence and how high?

MR. TORLEY: You can put on your side yard put up to a 6 foot fence which can be on your property line but actually got to make sure you don't go over your property line, so you can put a 6 foot fence.

MR. KANE: From the front of your house back, not

extending passed the front.

MR. MOTT: What if the front of his house is out further?

MR. KANE: Got nothing to do with your property.

MR. KRIEGER: How far is the front of your house from the road, do you know?

MR. MOTT: Thirty, 35 feet, I don't know exactly.

MR. MC DONALD: Yours is going to be 32?

MR. TORLEY: 30.

MR. KANE: Going to be right where you are, give or take.

MR. BABCOCK: Mr. Chairman, maybe just for the audience's benefit, under the non-conforming lots which most of the lots down in that area are, if he was to propose a house that's 25 x 36, he would be able to build that with no deck in the back, that's the size of the lot that he can afford to build a house, 25 x 36. He's asking for 28 x 36, which is three foot wider and a rear deck, that's what's creating these variances, so if he shrinks the house down and I'm, just so you can understand what the process is, if he shrinks the house down, he would be able to build it.

MR. MOTT: Look, I'm a stranger.

MR. BABCOCK: I want to say that just so you understand the reason.

MR. MOTT: I'm just concerned because I'm getting older, in a few years, I might want to sell my place, I don't want nothing to come in to kind of--

MR. KANE: Again, it's, you know, if he's going to put a nice home in there and just going to be a little bit bigger because of the deck, somebody else brings a home and puts whatever they want as long as they conform to the spes Mike was talking about, they wouldn't be here,

they don't need anybody's permission, they have the right to do it so. He wants to make it a shade longer with a garage and put a deck on the back, a small deck on the back of that, that's why he's here.

MR. MOTT: The town's established the fact that you can build on a non-conforming lot?

MR. KANE: As long as the house size fits on it, sure.

MR. TORLEY: Not any non-conforming lot.

MR. KANE: Depends on shape and size, non-conforming is a big word, you can have all different size and shaped lots.

MR. MOTT: I use it liberally.

MR. BABCOCK: In this area, the non-conforming lot requires that you have 5,000 square feet, this lot is 7,000 so it's big enough for the non-conforming lots criteria, the setbacks that he can't comply with is because of the size of the house.

MR. MOTT: Okay, thank you.

MR. TORLEY: Yes?

MS. YANNONE: I'm Stephanie Yannone and I live on the other side of this piece of property, but Mr. Mott asked all the questions. We were just concerned what was going in there, how close, you know, to our house is it and what it would look like. I've been there for 25 years and it's been vacant and we're just a little concerned what was going in there, that's all.

MR. TORLEY: So, are you in favor or opposed to the granting of this variance request or no opinion?

MS. YANNONE: No, I'm actually I'm for it because actually, they're closer to their, what they're building than what we are.

MR. BABCOCK: The other thing, the non-conforming lot, if he was to narrow the house down, he can, based on

lot width, he can probably go to 12 foot side yard.

MR. TORLEY: But you wouldn't have the front yard.

MR. BABCOCK: Well, if he narrowed it down he would.

MR. TORLEY: But what about the lot width?

MR. BABCOCK: Lot width and non-conforming lot if it's, yeah, it could be down to 50 feet.

MR. TORLEY: Is there anyone else who wishes to speak from the public?

MR. MOTT: I'd just like to add that I got a letter on this and we threw it out because it said it was Merline Avenue which is right but it's kind of misleading.

MR. TORLEY: The letter goes to everyone within--

MR. BABCOCK: Address is 88 Merline on this piece of property.

MS. YANNONE: We're on Myrtle, it's the wrong street.

MR. BABCOCK: Well, he would get the address from us, we assign the address to the property so apparently--so this is probably their address.

MR. TORLEY: Wait a minute, so we had the owner of this lot also owned lot 8, so this was his back yard?

MS. YANNONE: Goes straight down the back yards.

MR. TORLEY: So now we had two non-conforming lots in one ownership and the owner's now trying to split it into two?

MR. BABCOCK: Just like the other one this evening.

MR. TORLEY: Yeah.

MR. REIS: Is there an existing house on lot 8?

MR. BABCOCK: Yeah, they're saying that's where they

live.

MR. TORLEY: So the reason we're bringing this up is part of the code says if you have a piece of property that's made up of two or more non-conforming lots but you put them together makes it a conforming lot in one ownership and you can't just make a non-conforming lot out of it. If that was carried as one tax lot--

MR. BABCOCK: It's not one tax lot, it may be, I don't have--

MR. BIAGINI: No, it's two separate.

MR. BABCOCK: It's definitely two different tax lots.

MR. TORLEY: But it's in common ownership.

MR. BABCOCK: It's in common ownership and I can see we made the mistake, the property does say it's on Myrtle Avenue located on Myrtle Avenue and it's their name at 88 Merline, so when we transferred that over to the denial, we put that in as a street address. So that's our mistake. But they, apparently, if they're telling me we'd have to see if they're, if the records show that they're the owner of 30 and lot 8, they would also need the variance of 48 which is the two lots.

MR. TORLEY: And that was put into the code just to try to prevent people from having a string of lots that were at one time conforming but now are no longer the owner, he's now got a legal lot and prevents him from chopping it up into little pieces.

MR. KANE: Do we need to table this until the next meeting?

MR. BABCOCK: If you read the denial, number one 48-26 A, it says a variance to build a single family house non-conforming lot not in separate landownership. So we did cover that, that's why the address is the way it is.

MR. TORLEY: Regardless of what he wanted to put on the lot, he'd have to be here?

MR. BABCOCK: That's correct, yeah, if he shrinks the house so it fits the lot, he still needs a variance from that Section 4826 A.

MR. TORLEY: Anyone else in the public wish to speak on this? If nobody else wishes to speak, I'm going to close the public hearing, open it back up to the members of the board. This first one because all the lots out there are substandard, this is basically more or less the same size as most of the lots in the area, the trouble is it was held as a single, basically one large lot that would have met our codes, now it's being cut up, that has me concerned because that's our, the Town Board put that in the code saying this is not to be done.

MR. BIAGINI: But it's a separate tax parcel.

MR. TORLEY: Common ownership, adjacent property, I don't have my code book with me tonight.

MR. KANE: What did we publicly put in the paper as far as the hearing?

MR. TORLEY: Can you read the notice sent out?

MS. MASON: In the paper was a variance of 48-26 A to build a single family residence on a non-conforming lot and a variance for lot area, lot width, front and rear yard setbacks.

MR. TORLEY: How many were sent out?

MS. MASON: On January 23, 65 notices.

MR. BABCOCK: The only one mistake we made is when we transferred so like the gentleman said--

MR. TORLEY: Gentlemen, questions that you have? How long has this been held in one ownership?

MR. BIAGINI: I don't know.

MR. MOTT: At least 15, I would say.

MR. TORLEY: More than three years then. These lots were held by one person for quite some period of time when was this split made, when was the--still in the process now?

MR. BABCOCK: No, this is two separate lots today, I don't know when that was created though.

MR. TORLEY: When did the ownership change hands from owning both lots to the separate ownership?

MR. BIAGINI: I don't know.

MR. TORLEY: I thought you said that the person on Merline Avenue owned both lots.

MR. BIAGINI: Right, they own them but they're two separate lots.

MR. TORLEY: They own both lots. When did they sell or begin to sell this second lot?

MR. BIAGINI: To me, you mean?

MR. TORLEY: You're the purchaser from them?

MR. BIAGINI: Right.

MR. TORLEY: When did that happen?

MR. BIAGINI: Three months ago.

MR. BABCOCK: I think one of the issues is when did these people buy lot 30 and lot 8 at the same time, you know, if they acquired lot 8 at a different time, I think it would be a different situation also but we don't have any of that information, what time they acquired this lot, if they did it at the same time or how long they've owned both plots.

MR. RIVERA: Is that information available?

MR. BABCOCK: I would say not tonight, I would try to check my office but I'm not sure.

MR. TORLEY: We have the deeds here.

MR. REIS: Mr. Biagini, you're in contract or you took possession?

MR. BIAGINI: No, I'm in contract.

MR. REIS: Subject to you getting these variances?

MR. BIAGINI: Right.

MR. BABCOCK: 1986, Mr. Chairman, I have some information here that they purchased this, both lots in 1986, both.

MR. KRIEGER: When did they sell off 30?

MR. TORLEY: It's not sold, it's under contract.

MR. KRIEGER: So the McDermotts were actually people that owned 8 and 30 together?

MR. BIAGINI: Correct.

MR. TORLEY: Gentlemen, I yield to you, but I personally would like to think about this one and get the information back.

MR. KANE: Mr. Chairman, I'd like to move that we table this, the discussion until the next meeting so we can get some more information.

MR. MC DONALD: Second it.

MR. REIS: What's, may I ask a question, what more information do we need for us to make a decision on this?

MR. TORLEY: I want to reread and think about the common ownership and non-conforming lots aspect and how the Town Board expressed itself on that matter cause I don't wish to stray too far from their intentions. We have to balance that against the right of the owner to sell his property and realize the return on it, but I

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want to read that and think about that.

MR. MC DONALD: I agree.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. RIVERA	AYE
MR. MC DONALD	NO
MR. TORLEY	AYE

MR. BABCOCK: Are we tabling it to a date?

MR. KANE: To the next meeting.

MR. BABCOCK: What's the date, Myra?

MS. MASON: March 10.

HUDSON VALLEY DRILLING #02-34

Mr. Mike Frey appeared before the board for this proposal.

MR. TORLEY: Anyone in the audience who wishes to speak on this matter? Let the record show there is none.

MS. MASON: On January 23, we sent out 36 envelopes.

MR. TORLEY: What's your problem?

MR. FREY: The problem is the building's too close to the property, don't know if the mistake was by the surveyor or by the fence contractor, but the building was put too close to the property, it's a 50 x 60 steel building and one fence post is in the wrong place.

MR. KANE: Fence up before the building?

MR. FREY: Yes. There was some time before the building was built and we were ready for a C.O. on the property. When the town told me, I had the building plotted on the property by a surveyor, Mr. Washburn who's out of business. Mr. Hildreth then came in and discovered that problem and that's why we're here.

MR. TORLEY: On this map, do you mind showing me what we're talking about?

MR. FREY: It's right here in the corner.

MR. BABCOCK: This is the site plan and they took the fence which was existing before he bought the property and the property line basically runs the fence, that's what they tried to do so what happened was the fence is actually off the property line.

MR. TORLEY: It's on somebody else's property?

MR. BABCOCK: Yeah, it's partially yes and partially no.

MR. FREY: My fence is adjoining their fence and both of them are on the other property, we offered to buy

this property from the lady, she said no, get your variance so there's no opposition to the fence, they don't care about it.

MR. TORLEY: It should be simple, the unfortunate thing is if the fence is on somebody else's property, we can't give a variance for that.

MR. BABCOCK: He's not looking for a variance for the fence. What he's saying when the contractor went out, measured over from the fence instead of the property line. If you look at the map, it's very deceiving which is the fence, which is the property line, so he measured off the fence and the fence is over the property line which created this variance.

MR. KANE: Obviously, it would be a financial hardship to move the building.

MR. FREY: It's not impossible but it would be difficult to do.

MR. TORLEY: Financially impractical.

MR. FREY: Problem was really with the surveyor, they were nonchalant about the fence posts.

MR. KANE: Any complaints formally or informally about where the building lies right now with the fence where it is?

MR. FREY: No.

MR. KRIEGER: You have commercial property, what are your neighbors, commercial or residential?

MR. FREY: Both, there's a dog kennel and there's a residence out front.

MR. RIVERA: How many notices were sent?

MS. MASON: We sent out 36.

MR. KANE: Accept a motion?

MR. TORLEY: If there are no other questions.

MR. REIS: I have a question, what brings you to the ZBA?

MR. FREY: When I applied for my C.O. they said plot your building, when we plotted the building, we realized it was off the property, there's two surveyors involved and about five or ten year span, one surveyor went out of business, Mr. Washburn, Mr. Hildreth came in and found this problem.

MR. TORLEY: That may explain why he went out of business.

MR. FREY: At that time, the surveyor should of showed up at the time of the footing inspection, if there was any question and really in this case when you build, put a building within so many feet from a property line, the surveyor should have been there. I'm not a building contractor, I'm a well driller, but I know now and I was there when we measured it. We made some assumptions but in close proximity, the surveyor should always be there.

MR. KANE: Agreed. Mr. Chairman, accept a motion?

MR. TORLEY: Yes, sir.

MR. KANE: Move that we approve the request by Hudson Valley Drilling for 2.4 foot side yard variance on their Route 94 location.

MR. MC DONALD: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

MR. FREY: Thank you, gentlemen, and especially I want to thank Mr. Babcock, he's been outstanding in dealing

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with this.

REORGANIZATION

MR. TORLEY: Reorganizational meeting, time for our reorganizational meeting.

MR. KANE: I feel like we're the New York Assembly trying to pass a budget. I move that we keep the status quo as far as our organizational setup.

MR. MC DONALD: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

MR. RIVERA: Motion to adjourn.

MR. REIS: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

Respectfully Submitted By:



Frances Roth
Stenographer

2/11/03